

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
	:	
THE GAP, INC., and	:	
GAP (APPAREL) LLC,	:	07 Civ. 9614 (AKH)
	:	
Plaintiffs, and	:	ECF Filing
Counterclaim Defendants	:	
	:	
-against -	:	<b>DECLARATION OF DAVID KINCAID</b>
	:	<b>IN SUPPORT OF G.A.P</b>
G.A.P ADVENTURES INC.,	:	<b>ADVENTURES INC.'S MOTIONS TO</b>
	:	<b>AMEND OR ALTER THE PERMANENT</b>
Defendant, and	:	<b>INJUNCTION AND ORDER AND TO</b>
Counterclaim Plaintiff.	:	<b>SUSPEND OR STAY THE</b>
	:	<b>INJUNCTION PENDING APPEAL</b>
-----X	:	

I, David Kincaid, do hereby declare and state as follows:

1. I am the President and CEO at LEVEL5, Inc.. LEVEL5 is a company dedicated to helping its clients create and strengthen their brands and trademarks. LEVEL5 has been in business for 10 years and is located at 18 King Street, Mezzanine Level, Toronto, ON M5C 1C4.

2. My company LEVEL5 Inc., is one of Canada's fastest-growing strategic brand consultancies. LEVEL5 counts RIM, Manulife, PetroCanada, Canada Post, Bell, CIBC, Canadian Tire and Great Western Brewing Company among its more prominent clients. Prior to launching my own consultancy firm, I was the chief marketing officer at Corus Entertainment and Senior Vice-President of Marketing at Labatt Breweries of Canada, where I led the strategic brand planning around the company's expansion into the United States, Mexico, the Dominican Republic and Cuba. I also played a major role in the successful turnaround of Labatt Blue with the award-winning "Out of the Blue" marketing platform, and launched the Stella Artois and Alexander Keith brands. I am a frequent lecturer and speaker at Canada's leading business schools, and have written on marketing for a range of publications, including *Marketing*, *The Globe and Mail* and *Strategy*. I have helped steer the brand direction of such high-profile clients as Deeley Harley-Davidson, Sunnybrook Health Sciences Centre, Live Nation and CBC.

3. In general, helping a company identify a new brand name is a multi-step and time-consuming process that first requires the evaluation and screening of appropriate names for selection. Once a proposed name, or names, is selected, each is tested for consumer acceptance and cleared legally for its availability through trademark and business name searches. If conflicting marks, names or domain names are found negotiations to acquire those names may need to be take place or alternative names will then need to be identified.

4. Based on my years of experience, a proper re-branding process usually takes approximately 6 months, and 4-5 months if the project is accelerated. G.A.P Adventures first put out an RFP seeking assistance in identifying a new business name and trademark in early June. The original RFP requested that the work be completed by July 10. This due date was an unreasonable demand considering the normal timeframes for such projects. Neither LEVEL5, nor any other responsible branding company could or would do a rebranding in that timeframe.

5. Although LEVEL5 was interested in working with G.A.P Adventures on the project, there was absolutely no way we could take on the task of completing the work in the RFP within that short timeframe. Upon further discussions with G.A.P Adventures, they asked us for the shortest possible deadline that could be achieved and LEVEL5 agreed it could be done by early September if no unexpected complications arose. G.A.P Adventures then agreed to retain LEVEL5 to assist it in identifying, clearing and testing a new brand name. The cost of this project is estimated to be about \$180,000.

6. Although this expedited rebranding project is abbreviated in several ways, we believe that the work necessary to help G.A.P Adventures select a new brand could be completed by early September. Completing the process of identifying a new brand name for G.A.P Adventures within a 3-months period is a daunting task. To complete the work within this timeframe, we would be required to shorten our process and wholly eliminate some important analytical steps. Additionally, some steps which are usually completed in sequence would have to overlap so as to complete the project on time. Such alterations to the normal ordered process LEVEL5 uses increases the costs of the process, as explained below. Furthermore, any unexpected complications with the process, for example the legal trademark clearance, may arise

and delay the anticipated completion date for this project. Nonetheless, at this time, early September seems like a reasonable timeframe to complete the expedited process.

7. The first step of the rebranding process requires us to meet with the client and spend time getting to know the business, the market in which it operates, its competition, its purposes and missions. This step is important because names that are suggested as a brand should fit and complement all of these aspects of a business. Usually, this process could take a week or more, depending on the size of the business and the number of people and departments with whom the branding experts need to speak to properly understand the corporation and its business. However, on July 7, we met with G.A.P Adventures executives and began this process.

8. The second step of this process, under the usual 6-month project process, would be to create a "positioning brief". This is a document that explores and expands on the knowledge gained in the on-site meetings considering external sources and information, as well. It identifies a company's core purpose and foundation, and helps hone in on appropriate brands. This portion of the project can take up to four weeks, but would be entirely eliminated in this G.A.P Adventures project so as to meet the necessary deadlines for our work.

9. In the third step, the LEVEL5 team would work together with linguists to create a "naming brief". This document considers the attributes of the company and its purpose in conjunction with identifying the key elements necessary for the new brand. For example, one issue that is often considered is whether the name should be descriptive of the business or a coined term. The team then presents the naming brief to the client, and after the client's review and input, the naming brief will be revised. This part of the process would take up to two weeks.

10. The fourth step of the process is for the branding team to engage in several brainstorming sessions to generate a list of possible brand names, with due consideration paid to

the analysis set forth in the naming brief. This initial list may have as many as 100 possible brand names. At this point, a preliminary search is performed – using the internet and other cost effective methods – to confirm that there would be no prior uses of any proposed name that would be confusing or problematic.

11. Fifth, armed with a list of 25-50 potential names, the client is then consulted to determine which of the names should be considered further and researched in-depth. In the case of G.A.P Adventures, LEVEL5 anticipates narrowing the list to between 3 and 7 potential names.

12. Sixth, we would perform “equity testing”. This is testing of the brand name with consumers or whatever class of people will be buying or using the branded product. For G.A.P Adventures, we would create a unique on-line survey, to be taken by at least 500 people, both consumers and travel agents, that would test the narrowed choice of brand names. Such a survey gauges consumer/agent reaction, pleasing approval of the name, and any associations that are incorrectly made with existing brands. After conducting the survey, our brand consultants gather the responses, analyze and interpret the results. We review the results of the branding with the client and select a name. Under a usual timeline, this equity testing step and analysis of the results would alone require about 7 weeks.

13. Seventh, we engage an attorney to perform clearance of the potential trademarks chosen. The clearance may be for the United States or, if the brand is to be used globally, international counsel will need to be consulted.

14. Eighth, a logo is created using the selected brand name. In this process, creative teams will explore typefaces, imagery, color, graphic devices and logo alternatives. Thereafter, the options would be presented to the client for feedback, which is then used to refine

and present a final visual style and identity. We would then conduct production of logo artwork for selected direction. This whole process could require about 4-5 weeks to complete.

15. This involved process can be streamlined to shorten its duration for G.A.P Adventures. One of the primary ways is to perform steps four through eight simultaneously in about 5 weeks. For example, once a list of possible names is generated, we can continue with the subsequent steps and perform the preliminary checks on those names, narrow the list with the client, etc., before we have derived a complete and preliminary list.

16. By performing the later steps simultaneously, we may reduce the amount of time of the overall brand identification process, as requested by G.A.P Adventures, but we necessarily increase the cost of the process. This is because we will not have narrowed the possible brand name choices before continuing to the next step – the client necessarily incurs additional costs because it goes through later steps with more choices before they have been narrowed by the process of the previous step. For example, trademark counsel is expected to provide clearance for multiple names so that if a problem is identified with any chosen name at any point in the process, other possible names have already been cleared and there need not be a further delay while clearance for other possible names is obtained.

17. Finally, in the ninth step, once the name is selected, trademark counsel will be engaged to prepare and file applications in the U.S. and foreign jurisdictions (if the brand name it to be used globally or beyond the United States).

18. We have been instructed by G.A.P Adventures to complete our work in this rebranding process to be able to introduce the new brand in the United States in September or, if a stay is granted, immediately upon the final decision of the Court of Appeals if the decision of the District Court is affirmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 14, 2011

  
\_\_\_\_\_  
David Kincaid